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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES



APPELLANT'S REPLY BRIEF ON APPEAL

APPELLANTS: Masanori Iwasaki OLD DOCKET NO.: P99,0922
NEW DOCKET NO: 09792909-4267
SERIAL NO.: 09/362,058 GROUP ART UNIT: 2613
FILING DATE: July 28, 1999 EXAMINER: Richard J. Lee
INVENTION: "THREE-DIMENSIONAL IMAGE-CAPTURING APPARATUS"

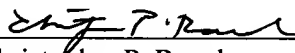
Mail Stop Appeal Brief - Patents
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Appellant submits herewith Appellant's Reply Brief on Appeal under 37 C.F.R. §41.41 in response to the Examiner's Answer mailed on May 16, 2006.

The Commissioner is hereby authorized to charge any deficiency in fees associated with this communication or credit any overpayment to Deposit Account No. 19-3140. A duplicate copy of this sheet is enclosed.

Respectfully Submitted,

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CERTIFICATE OF MAILING

I hereby certify that this original and two copies of this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on July 17, 2006.

Christopher P. Rauch (Reg. No. 45,034)
Christopher P. Rauch

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Dear Sir:

In accordance with the provisions of 37 C.F.R. §41.41, Appellant submits this Reply Brief on Appeal in response to the Examiner's Answer mailed on May 16, 2006. Appellant respectfully submits that the Examiner's assertions are incorrect as a matter of fact and law. Thus, for the reasons set forth below, Appellant respectfully requests that this Board reverse the rejections of claims 1, 2, 5, and 6 under 35 U.S.C. §103.

In accordance with the provisions of 37 C.F.R. §41.37, Appellant submits this Main Brief on Appeal pursuant to the Notice of Appeal filed on September 25, 2005 in the above-identified application.

I. STATUS OF CLAIMS:

Claims 1, 2, 5, and 6 are pending in the application. The present appeal is directed to claims 1, 2, 5, and 6, which were finally rejected in an Office Action dated July 25, 2005. A copy of claims 1, 2, 5, and 6 is appended to Appellant's Main Brief on Appeal as an Appendix.

The status of the claims on appeal is as follows:

Claims 1, 2, and 5 are rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over *Moreton, et al.* (U.S. Patent No. 5,835,133) in view of *Ishihara, et al.* (U.S. Patent No. 5,737,084) and further in view of *Kobu, et al.* (Japanese No. JP-60037520) and further in view of *Suzuki, et al.* (U.S. Patent No. 6,437,824).

Claim 6 is rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over *Moreton, et al.* (U.S. Patent No. 5,835,133) in view of *Ishihara, et al.* (U.S. Patent No. 5,737,084) and further in view of *Kobu, et al.* (Japanese No. JP-60037520) and further in view of *Suzuki, et al.* (U.S. Patent No. 6,437,824) and further in view of *Tabata, et al.* (U.S. Patent No. 6,177,952).

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL:

A. Claims 1, 2, and 5 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over *Moreton, et al.* (U.S. Patent No. 5,835,133) in view of *Ishihara, et al.* (U.S. Patent No. 5,737,084) and further in view of *Kobu, et al.* (Japanese No. JP-60037520) and further in view of *Suzuki, et al.* (U.S. Patent No. 6,437,824).

B. Claim 6 atand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over *Moreton, et al.* (U.S. Patent No. 5,835,133) in view of *Ishihara, et al.* (U.S. Patent No. 5,737,084) and further in view of *Kobu, et al.* (Japanese No. JP-60037520) and further in view of *Suzuki, et al.* (U.S. Patent No. 6,437,824) and further in view of *Tabata, et al.* (U.S. Patent No. 6,177,952).

III. ARGUMENT:

Claims 1, 2, 5, and 6 stand rejected under 35 U.S.C. §103 by the Examiner as being unpatentable based on various references. As set forth more clearly below, the rejections of the claims set forth by the Examiner under 35 U.S.C. §103 are improper and accordingly the Board should reverse these rejections.

A. Claims 1, 2, and 5 are not unpatentable under 35 U.S.C. §103(a) based on the teachings of *Moreton* in view of *Ishihara* and further in view of *Kobu* and further in view of *Suzuki*

Appellant respectfully submits that the Examiner's assertions are incorrect as a matter of fact and law. Thus, for the reasons set forth below, Appellant respectfully requests that this Board reverse the rejection of claims 1, 2, and 5 under 35 U.S.C. §103(a) as being allegedly unpatentable based on the teachings of *Moreton* in view of *Ishihara* and further in view of *Kobu* and further in view of *Suzuki*.

1. *Moreton* in view of *Ishihara* fails to disclose or suggest a plurality of optical systems that each have a light-limiting means provided in an optical path between an imaging-side reflection means and a lens

Moreton fails to disclose Appellant's claimed light-limiting means, and one having skill in the art would not have been motivated to combine *Ishihara*'s light-limiting means with *Moreton* because *Ishihara* fails to even relate to a device that has a plurality of optical systems. As acknowledged by the Examiner, *Moreton* fails to teach Appellant's claimed light-limiting means. (Examiner's Answer of 5/16/2006, page 4). *Moreton* teaches a plurality of optical systems, yet none of its optical systems has a light-limiting means. Further, unlike Appellant's claimed invention, *Moreton* fails to disclose a lens for each optical system, and instead discloses a single common lens for all of its optical systems. (See, *Moreton* Figure 2A item 45).

Thus, the Examiner combines *Moreton* with *Ishihara* in an attempt to suggest Appellant's claimed device. However, Appellant submits that one having skill in the art would not have been motivated to include two light-limiting means in *Moreton* (i.e. one for each image-capturing region), because this would block the light coming to *Moreton's* single common lens. And if a single light-limiting means is added to *Moreton*, this fails to teach Appellant's claimed light-limiting means and lens provided in each of a plurality of optical systems. Therefore, Appellant submits that *Moreton* teaches away from using a different lens and light-limiting means for each optical system. As *Moreton* teaches away from using a different light-limiting means for each optical system, one having skill in the art would not have been motivated to combine such light-limiting means with *Moreton's* device.

Further, unlike *Moreton*, *Ishihara* fails to even relate to a device that includes a plurality of optical systems for different image-capturing regions. Instead, *Ishihara* relates to a shape measuring apparatus that includes a single optical system, not a plurality of optical systems. (See, e.g., *Ishihara* Figure 5).

Therefore, *Moreton* teaches away from using a different lens and light-limiting means for each of its optical systems. And *Ishihara* fails to even relate to a device that includes a plurality of optical systems. Therefore, Appellant submits that one having skill in the art would not have been motivated to combine *Ishihara's* light-limiting means with *Moreton's* device, because *Moreton* teaches away from this combination. Further, *Ishihara* provides no motivation for this combination, because *Ishihara* fails to even relate to a device that includes a plurality of optical systems.

2. ***Moreton* in view of *Suzuki* fails to disclose or suggest Appellant's claimed device having an infrared cut filter**

Appellant reaffirms Appellant's arguments presented in Appellant's Main Brief on Appeal and traverses the Examiner's arguments made in the Examiner's Answer.

3. **Moreton in view of Ishihara, Kobu, and Suzuki fails to disclose or suggest the claimed invention**

The Examiner argues that the Examiner has not used impermissible hindsight by combining four references in an attempt to disclose or suggest Appellant's claimed invention. *Examiner's Answer*, page 9. Appellant respectfully disagrees. As stated previously, the Examiner has had to pick and choose individual elements from no less than four unrelated references in an attempt to arrive at Appellant's claimed invention. However, as also stated previously, there was no motivation to combine *Moreton* with *Ishihara* or *Suzuki*. Since there was no motivation to combine these references, there could be no suggestion to combine their individual elements. Thus, *Moreton* in view of *Ishihara*, *Kobu*, and *Suzuki* fails to disclose or suggest the claimed invention.

Appellants respectfully request that the Board reverse the rejection of claims 1, 2, and 5.

B. **Claim 6 is not unpatentable under 35 U.S.C. §103(a) based on the teachings of Moreton in view of Ishihara and further in view of Kobu and further in view of Suzuki and further in view of Tabata**

As discussed in Appellant's Main Brief on Appeal and above, *Moreton* in view of *Ishihara*, *Kobu*, and *Suzuki* fails to disclose or suggest Appellant's claimed device having a light-limiting means and infrared cut filter. *Tabata* fails to discuss a light-limiting means or an infrared cut filter. Therefore, *Moreton* in view of *Ishihara* and further in view of *Kobu* and further in view of *Suzuki* and further in view of *Tabata* fails to disclose or suggest the claimed invention.

Further, the combined references, taken singly or in combination fail to disclose or suggest Appellant's claimed device having parallax of one centimeter or greater between viewpoints. In the final rejection, the Examiner argued that *Tabata* suggests Appellant's claimed

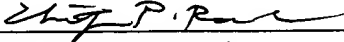
parallax limitation. *Office Action dated July 25, 2005*, page 6. However, Appellant respectfully disagrees. Although *Tabata* discusses that parallax exists between its right and left images, nowhere does *Tabata* discuss that its device has parallax of one centimeter or greater between viewpoints. *Tabata* 6:25-30; 20:8-14. This claimed subject matter is simply not taught by *Tabata*. Therefore, *Moreton* in view of *Ishihara* and further in view of *Kobu* and further in view of *Suzuki* and further in view of *Tabata* also fails to disclose or suggest Appellant's claimed limitation relating to a parallax of one centimeter or greater between viewpoints.

Appellants respectfully request that the Board reverse the rejection of claim 6.

VIII. CONCLUSION:

For the foregoing reasons, Appellants respectfully submit that the rejections posed by the Examiner are improper as a matter of law and fact. Accordingly, Appellants respectfully request the Board reverse the rejections of claims 1, 2, 5, and 6.

Respectfully submitted,

 (Reg. No. 45,034)
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